

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING – DIVISION OF WATER RIGHTS
SEPTEMBER 22, 2005**

ITEM 11

SUBJECT:

CONSIDERATION OF PROPOSED RESOLUTION ADOPTING EMERGENCY REGULATIONS REVISING THE STATE WATER RESOURCES CONTROL BOARD'S WATER RIGHT AND WATER QUALITY CERTIFICATION FEE SCHEDULES IN TITLE 23, DIVISION 3, OF THE CALIFORNIA CODE OF REGULATIONS

DISCUSSION:

In Fiscal Year (FY) 2005-06, the Budget Act requires the State's water rights program administered by the State Water Resources Control Board (State Water Board), including the water rights fee collection efforts of the State Board of Equalization, to be supported by fee revenues amounting to \$9.589 million. The State Water Board estimates that mid-year budget adjustments will increase this amount to \$9.717 million. The Water Code requires the State Water Board to annually adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury. The emergency regulations may include provisions concerning the administration and collection of the fees.

The State Water Board must annually set a fee schedule that will generate revenues to the Water Rights Fund consistent with the Budget Act for the fiscal year. The State Water Board may adjust the fees set each year to account for over- or under-collections the previous year. Fees may be assessed for actions specified in the Water Code and may be expended to support regulatory activities specified in the Water Code.

By June 30, 2005, the Water Rights Fund had collected \$8.01 million in FY 2004-05 from water right fees and water quality certification fees associated with water supply actions. Additional funds remained in the Fund from previous years' fees. After subtracting program costs and accounting for encumbrances, approximately \$1.831 million was left in the Water Rights Fund at the end of the fiscal year.

The Division of Water Rights assumes for the purposes of calculating the fees that the budget target for FY 2005-06 is \$7.886 million (\$9.717 - \$1.831 million). Assuming a non-collection rate of 10 percent, the total amount to be billed is \$8.762 million.

The proposed regulations would set fees for water right and water quality certification programs to collect fee revenues to cover the cost of these programs. If the proposed fee schedule is adopted by the State Water Board, the general result will be to: (1) increase annual fees for permits and licenses that allow diversions of more than 10 acre-feet per annum (afa), (2) increase annual fees for applications that allow diversions of more than 10 afa, (3) decrease annual fees for projects under review for 401 Certification for FERC licensing, (4) decrease annual fees for projects issued FERC licenses pursuant to 401 certification, (5) increase filing fees for the largest (in terms of quantity of water to be appropriated or transferred) applications, petitions, and water transfers, and (6) decrease filing fees for small hydroelectric generating facilities that meet the criteria for a Class 28 categorical exemption under the California Environmental Quality Act. Fees for roughly half of the current fee payers will remain unchanged from last year. The water right and water quality certification fee regulations and schedules will be contained in division 3 of title 23 of the California Code of Regulations.

POLICY:

Should the State Water Board adopt the proposed resolution?

FISCAL IMPACT:

The Budget Act for FY 2005-06 requires the water right program to be supported by fee revenues amounting to \$9.717 million, inclusive of a mid-year budget adjustment. The proposed fee schedule is anticipated to result in collections of \$7.886 million, which in combination with existing resources in the Water Rights Fund will provide the required revenues.

RWQCB IMPACT:

None.

STAFF RECOMMENDATION:

Staff recommends that the State Water Board adopt the proposed resolution.

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-**

**ADOPTING EMERGENCY REGULATIONS AMENDING WATER RIGHT AND
WATER QUALITY CERTIFICATION FEE SCHEDULES IN TITLE 23, DIVISION 3,
OF THE CALIFORNIA CODE OF REGULATIONS**

WHEREAS:

1. Pursuant to Water Code section 1058, the State Water Resources Control Board (State Water Board) has the authority to adopt regulations to carry out its powers and duties under the Water Code.
2. In Fiscal Year 2005-2006, the Budget Act requires the State Water Board's water rights program and the water rights fee collection efforts of the State Board of Equalization to be supported by fee revenues amounting to \$9.589 million. The State Water Board estimates that mid-year budget adjustments will increase this amount to \$9.717 million.
3. Chapter 5 of the Water Code (commencing with section 1525) and Water Code section 13160.1 require the State Water Board to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury, and allow the State Water Board to revise fees for water quality certification. The emergency regulations may include provisions concerning the administration and collection of the fees.
4. The water right fee regulations must be adopted to implement the fee revenue requirement in the Budget Act.
5. The State Water Board must set a fee schedule that will generate revenues in the amount the Budget Act sets for specified regulatory activities. The State Water Board may adjust annual fees for Fiscal Year 2005-2006 because fee revenues from Fiscal Year 2003-2004 and Fiscal Year 2004-2005 were greater than the revenue levels set forth in the Budget Act.
6. State Water Board staff prepared recommended revisions to the State Water Board's water right and water quality regulations to implement the Water Code and the requirements of the Budget Act.
7. The water right and water quality certification fee regulations and schedules will be contained in division 3 of title 23 of the California Code of Regulations.

8. The State Water Board heard comments on the staff proposal at a public workshop conducted on September 7, 2005, and received written comments from interested persons.
9. These emergency regulations will take effect upon filing with the Secretary of State.

THEREFORE BE IT RESOLVED THAT:

The State Water Board adopts emergency regulations revising division 3 of title 23 of the California Code of Regulations as recommended by staff to implement the Water Code and provisions of the 2005 Budget Act.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 22, 2005.

DRAFT

Debbie Irvin
Clerk to the Board

STATE WATER RESOURCES CONTROL BOARD
PROPOSED EMERGENCY REGULATIONS

Amendments to Division 3 of Title 23 of the California Code of Regulations

Repeal the following section:

~~§793. Filing Fee When Multiple Changes or Rights Involved.~~

~~With respect to a single application, permit, license, or other water right upon which a change petition is filed, a petition or petitions for more than one change shall be considered a single petition insofar as the filing fee is concerned, provided the changes are of such nature that action on them can be taken simultaneously. A petition involving changes to more than one application, permit or license or other water right upon which a change petition is filed shall be deemed a separate petition for each and applicable fees will be required for each.~~

~~Authority: Sections 1058 and 1530, Water Code.~~

~~Reference: Sections 1436 and 1525, Water Code.~~

Amend the following section:

§ 1062. Filing Fees for Water Right Applications.

(a) A person who files a water right application shall pay to the board a filing fee as follows:

(1) ~~(A) The~~ Except as provided in subparagraph (B), the fee for a water right application shall be \$1,000, plus \$15 for each acre-foot that the applicant seeks to divert in excess of 10 acre-feet. The total fee shall not exceed ~~\$400,000~~ \$410,000, plus any additional fee due pursuant to subparagraphs (2) and (3).

(B) At a facility where a small hydroelectric generating facility meets the criteria for a Class 28 categorical exemption under the California Environmental Quality Act, as established in California Code of Regulations, title 14, section 15328, the fee shall be \$1,000.

(2) If a water right application is accompanied by a petition to revise a declaration of fully appropriated stream systems, then \$10,000 shall be added to the fee.

(3) If a water right application is accompanied by a petition for assignment of a state-filed application pursuant to Water Code section 10504, then \$5,000 shall be added to the fee.

(b) A person who filed a water right application on or after July 1, 2003, and prior January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The application filing fee includes a non-refundable \$250 initial review fee.

Authority: Sections 1058 and 1530, Water Code.
Reference: Sections 1525 and 1535, Water Code.

Amend the following section:

§ 1063. Annual Fees for Water Right Applications.

Under any of the following circumstances, a water right applicant shall pay an annual fee, as set forth in section 1066:

- (a) The diversion of water, the construction of diversion works, or the clearing of land where the diverted water will be used or stored, has been initiated before a permit is issued authorizing the diversion.
- (b) The applicant requests the board to delay processing the water right application.
- (c) The applicant is a lead agency under the California Environmental Quality Act (CEQA) (commencing with Public Resources Code section 21000) and has not adopted or certified a final environmental document for the project for which the application is filed, as may be required under CEQA, within two years after the board **first** provides notice of the water right application.
- (d) The applicant fails to provide supplemental information requested pursuant to Water Code section 1275 within the time period provided.
- (e) The Chief, Division of Water Rights, has determined that a permit may be issued for the project, but the applicant has not paid filing fees required under Public Resources Code section 10005, Fish and Game Code section 711.4, or other law.

Authority: Sections 1058 and 1530, Water Code.
Reference: Sections 1525, 1536 and 1537, Water Code.

Amend the following section:

§ 1064. Filing Fees for Petitions or Requests.

(a) A person who files a petition or a request for release from priority shall pay to the board a filing fee for each water right application, permit or license covered by the petition or request in accordance with this section.

(1) For purposes of calculating the filing fee, a petition to change one or more terms of a single application, permit, license, or other water right shall be considered a single petition, provided that action can be taken on the changes simultaneously, except that a petition for an extension of time shall be considered a separate petition, subject to a separate fee, from a petition to change one or more other terms in the water right. A petitioner requesting changes to more than one application, permit, license, or other water right shall file a separate petition or petitions for each water right and a filing fee shall be required for each petition. A separate filing fee shall be required for each change petition

subsequently filed on a water right that is already the subject of a pending petition for change. Except as provided in subparagraphs (A), (B), and (C), the fee for a petition to change the terms of an application, permit or license shall be as follows. The fee shall be a minimum of \$1,000. If the total annual amount of diversion sought by the pending application or authorized by the permit or license, as calculated in accordance with section 1066, is greater than 10 acre-feet, then the petitioner shall pay an additional \$0.30 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed \$5,000.

(A) Except as provided in subparagraphs (i), (ii), and (iii), the fee for a petition to change the terms of an application, permit or license shall be as follows. The fee shall be a minimum of \$1,000. If the total annual amount of diversion sought by the pending application or authorized by the permit or license, as calculated in accordance with section 1066, is greater than 10 acre-feet, then the petitioner shall pay an additional \$0.30 for each acre-foot in excess of 10 acre-feet. The total fee shall not exceed \$5,000~~5,150~~.

(i) The fee for a petition for change pursuant only to Water Code section 1707 shall be \$850.

(Bii) The fee for a change petition involving a transfer of water pursuant to Water Code section 382, 1701, 1725, or 1735 shall be \$2,000, plus \$0.30 for each acre-foot that the petitioner seeks to transfer in excess of 10 acre-feet. The fee shall be based on the maximum amount of water proposed to be transferred annually, not the amount of water proposed to be transferred over the entire term of the transfer. The total fee shall not exceed \$~~410,000~~400,000.

(Ciii) The fee for a petition for extension of time shall be \$1,000.

(2) The fee for a petition to change the point of discharge, place of use, or purpose of use of treated wastewater pursuant to Water Code section 1211 shall be \$1,000.

(3) The fee for a request for release from priority of a state-filed application pursuant to Water Code section 10504 shall be \$5,000.

(4) The fee for a petition filed pursuant to Water Code section 1228.7 to change the point of diversion or place of use under a registration of an appropriation for small domestic or livestock stockpond use shall be \$250.

(b) A person who filed a petition or a request for release from priority on or after July 1, 2003, and prior to the January 1, 2004, shall pay a supplemental filing fee equal to the difference between the filing fee already paid and the amount due pursuant to the regulation in effect on January 1, 2004.

(c) The petition filing fee includes a non-refundable \$250 initial review fee.

Authority: Sections 1058 and 1530, Water Code.
Reference: Sections 386, 1525 and 1535, Water Code.

Amend the following section:

§ 1065. Annual Fees for Petitions or Requests.

If any of the following circumstances occurs, a person filing a petition or request for release from priority shall pay an annual fee of \$1,000 for each water right application, permit or license covered by the petition or request. This annual fee is in addition to any annual fee required under section 1066.

(a) The person requests the board to delay processing the petition or request.

(b) The person diverts or uses water, before the board approves the requested change, in a manner that is not authorized without approval of the requested change.

(c) The person is a lead agency under the California Environmental Quality Act (CEQA) (commencing with Public Resources Code section 21000) and has not adopted or certified a final environmental document for the project for which the petition or request is filed, as may be required under CEQA, within two years after the board first provides notice of the petition or request.

(d) The person fails to provide supplemental information requested pursuant to Water Code section 1701.3 within the time period provided.

Authority: Sections 1058 and 1530, Water Code.
Reference: Sections 1525, 1536 and 1537, Water Code.

Amend the following section:

§ 1066. Annual Fees for Permits or Licenses.

(a) A person who holds a water right permit or license shall pay a minimum annual fee of \$100. If the total annual amount of diversion authorized by the permit or license is greater than 10 acre-feet, then the permittee or licensee shall pay an additional \$0.030.025 for each acre-foot in excess of 10 acre-feet.

(1) For permits or licenses issued prior to the beginning of the year for which the fee is imposed, the board shall calculate annual fees according to the total annual amount of diversion authorized by the permit or license as of the beginning of the year.

(2) The board shall calculate annual fees for permits issued on or after the beginning of the year according to the total annual amount of diversion authorized by the permit as issued by the board.

(b) The board shall calculate the annual fee based on the total annual amount of diversion authorized by the permit or license, without regard to the availability of water

for diversion or any bypass requirements or other conditions or constraints that may have the practical effect of limiting diversions but do not constitute a condition of the permit or license that expressly sets a maximum amount of diversion.

(1) If the permit or license does not expressly identify the total annual amount of diversion, the board shall calculate the total annual amount based on the rate of authorized diversion multiplied by the length of time in the authorized season of diversion.

(2) If the permit or license contains an annual use limitation that is applicable only to that permit or license, and the limitation is less than the calculated diversion volume, the fee shall be based on the amount specified in the limitation.

(3) If a person holds multiple water rights that contain an annual use limitation that is applicable to the combination of those rights, but the person may still divert the full amount authorized under a particular right, then the fee shall be based on the total annual amount for that individual right.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1525, 1536 and 1537, Water Code.

Amend the following section:

§ 1067. Water Leases.

(a) A person who files an application for approval of a water lease agreement pursuant to Water Code section 1025.5 shall pay to the board a filing fee equal to an amount calculated in accordance with the fee schedule in section 1062 of this chapter, except that the fee shall be based on the amount of water proposed to be leased over the entire term of the lease instead of the amount proposed to be diverted per year, and the fee shall not be subject to any \$400,000 limit imposed under that section. The filing fee shall constitute all annual fees for the term of the lease.

(b) A person who provides notice of a water lease to the board shall pay to the State Board of Equalization an annual fee determined by the board pursuant to this subdivision.

(1) When a water district submits a notice to the board under Water Code section 1025, the water district shall include in the notice sufficient information for the board to determine the maximum amount of water to be leased for each year the lease will be in effect. The board shall determine the annual fees for the lease in an amount equal to the fee set forth in section 1062 of this chapter for the first year of the lease, and the fee set forth in section 1062 for each additional year the lease agreement is in effect, except that the fee for each year shall not be subject to any \$400,000 limit imposed under that section. In applying section 1062 to calculate the amount of the fee for the lease, the board shall calculate a separate annual fee for each year based on the amount of water proposed to be leased each year instead of calculating the fee based on the amount of water proposed to be diverted per year.

(2) The water district shall notify the board that it has approved a lease agreement, and shall provide the board a copy of the notice of determination submitted in compliance with the California Environmental Quality Act (commencing with section 21000 of the Public Resources Code), within ten days after the water district approves the lease agreement.

(3) The water lease shall not take effect until the first annual fee is paid, and the water lease shall not continue in effect in any subsequent year unless the annual fee for that year is paid.

(c) The board may collect additional fees to cover its costs of compliance with Water Code sections 1026 and 1029.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1025, 1025.5, 1031 and 1525, Water Code.

Amend the following section:

§ 1071. Hydroelectric Projects.

(a) Except as provided in subdivision (b), a fee imposed under this chapter for an activity involving the diversion or use of water for the purpose of diverting water for hydropower generation shall be calculated as follows:

(1) At a facility licensed, or subject to licensing, by the Federal Energy Regulatory Commission, the fee shall be the greater of either 30 percent of the fee calculated in accordance with the other applicable provisions of this chapter or \$100.

(2) At all other hydropower generation facilities, the fee shall be the greater of either 50 percent of the fee calculated in accordance with the other applicable provisions of this chapter or \$100.

(b) Subdivision (a) does not apply to the following:

(1) Any permit, license, application, petition or other filing that authorizes or proposes an irrigation use, municipal use, or other consumptive use unless that permit, license, application, petition or other filing is primarily for power use and specifically identifies the consumptive use as an incidental use.

(2) Any fee or portion of a fee imposed pursuant to ~~paragraph (1)(B), (2) or paragraphs (2) and~~ (3) of subdivision (a) of section 1062, subdivision (d) of section 1063, subdivision (d) of section 1065, or section 1069.

(3) Any expense imposed under part 3 (commencing with section 2000) of division 2 of the Water Code or to any fee imposed under chapter 28 of this division.

Authority: Sections 1058 and 1530, Water Code.

Reference: Section 1525, Water Code.

Amend the following section:

§ 1077. Petition for Reconsideration.

(a) The board’s determination that a person is required to pay a fee, or determination regarding the amount of the fee, shall be subject to reconsideration under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition for reconsideration shall be submitted by the fee payer in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title. The petition also shall specify why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated. A petition for reconsideration of a fee assessed by the State Board of Equalization must include a copy of the notice of assessment.

(b) If the subject of a petition for reconsideration relates to an assessment by the State Board of Equalization, the board’s decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. A petition for reconsideration is timely filed only if the board ~~or State Board of Equalization~~ receives the petition within 30 days of the date the assessment is issued.

(c) The State Board of Equalization shall not accept a petition for reconsideration of the board’s determination that a person is required to pay a fee, or the amount of the fee. If the State Board of Equalization receives any petition for reconsideration, it shall promptly forward the petition to the board.

Authority: Sections 1058 and 1530, Water Code.

Reference: Sections 1120 and 1537, Water Code.

Amend the following section:

3833.1. Annual Fees for FERC Licensed Hydroelectric Projects.

(a) Each applicant seeking water quality certification for an activity that includes, or involves construction or modification of facilities for the purpose of, producing hydroelectric power, where the activity or facilities require the issuance or amendment of a FERC license, shall pay an annual fee in accordance with this section.

(b)(1) An annual fee calculated pursuant to paragraphs (4) and (5) shall apply in each fiscal year (July 1 through June 30) during or after the year in which review in anticipation of consideration of certification is initiated as specified in paragraph (2) and until and including the fiscal year in which certification and related federal proceedings are complete as specified in paragraph (3).

(2) Review in anticipation of consideration of certification shall be deemed to have been initiated when any of the following occurs or has occurred:

- (A) A notice of intent is filed pursuant to 18 CFR § 5.6 or 18 CFR § 16.6.

(B) Consultation is initiated pursuant to 18 CFR § 4.38.

(C) An application for water quality certification is filed.

(3) Certification and related proceedings shall be deemed to have been completed when any of the following occurs:

(A) FERC issues or denies the license or license amendment for which review in anticipation of consideration of certification was initiated.

(B) FERC determines that no license, other than a license already in effect, or license amendment is required.

(C) The applicant abandons the proposed activity, including withdrawal or voluntary surrender of any applicable notification of intent, FERC preliminary permit, FERC license application or FERC license.

(4) The annual fee shall be \$1,000 plus \$0.150.13 per kilowatt, based on the authorized or proposed installed generating capacity of the hydroelectric facility.

(A) In the case of an application for an original, new or subsequent license, as those terms are used in Parts 4, 5 and 16 of Title 18 of the CFR, the annual fee shall be based on the installed generating capacity of the facility as proposed in the notification of intent, application for FERC license, application for certification, or existing license that is proposed for takeover or relicensing, whichever is greatest.

(B) In the case of a proposed amendment to an existing FERC license, the component of the fee based on installed generating capacity shall be based on the amount by which the installed generating capacity of the hydroelectric facility would be increased by the proposed amendment.

(5) If an applicant for certification has paid any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the state board shall credit against the annual fee specified in paragraph (4) any portion of that deposit that was for costs incurred after June 30, 2003. If an applicant for certification was required to pay but did not pay any deposit pursuant to subdivision (b) of section 3833 as that subdivision was in effect before January 1, 2004, the annual fee shall include any unpaid deposit, less any portion of that unpaid deposit that was for costs incurred after June 30, 2003, in addition to the annual fee specified in paragraph (4).

(6) If an application for certification is filed for an activity for which no annual fees have previously been imposed, the annual fee shall be due upon filing of the application for certification, and shall be paid to the state board. In all other cases, the annual fee shall become due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(c)(1) The holder of any FERC license for a hydroelectric project for which water quality certification has been issued shall pay an annual fee in the amount of \$100 plus \$0.015 per kilowatt, based on the authorized installed generating capacity of the hydroelectric project.

(2) The fee imposed under this subdivision shall not apply in the fiscal year when the FERC license is issued if an annual fee is imposed in that fiscal year pursuant to subdivision (b).

(3) The annual fee imposed under this subdivision shall be due thirty days after the State Board of Equalization gives notice of the fee, and shall be paid to the State Board of Equalization.

(d)(1) A determination by the state board that an applicant is required to pay a fee under this section or paragraph (1) of subdivision (b) of section 3833, and any determination by the state board regarding the amount of that fee, is subject to review under chapter 4 (commencing with Section 1120) of part 1 of division 2 of the Water Code. Any petition by an applicant to the state board for review shall be submitted in accordance with that chapter and article 12 (commencing with section 768) of chapter 2 of division 3 of this title.

(2) If the subject of a petition for reconsideration relates to an annual fee, other than an annual fee first required to be paid pursuant to paragraph (1) of subdivision (b) of section 3833, the board's decision regarding an annual fee shall be deemed adopted on the date of assessment by the State Board of Equalization. The petition must be received by the board within 30 days of the date of assessment by the State Board of Equalization.

Authority: Section 13160.1, Water Code.

Reference: Section 13160.1, Water Code.